

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re Application	Attorney Docket No.:	0093/000032
of: HEINZ et al.	Confirmation No.:	5170
Application No.: 10/019,048	Group Art Unit:	1636
Filing Date: December 27, 2001	Examiner:	C. S. HIBBERT
Title:	Plants Expressing delta6-Desaturase Genes and Oils from these Plants containing PUFAs and Method for Producing Unsaturated Fatty Acids	

Honorable Commissioner for Patents  
P.O. Box 1450  
Alexandria VA 22313-145

**DECLARATION PURSUANT TO 37 C.F.R. §1.131**

Honorable Sir:

I, Prof. Dr. Ernst HEINZ, citizen of Germany, who currently resides at Püttkampsweg 13, 22609 Hamburg, Germany, my post office address being the same as my residence address, hereby declare:

1. I am the Dr. Ernst HEINZ who executed the Declaration pursuant to 37 C.F.R. §1.131, dated February 04, 2008, and submitted to the U.S. PTO in the above-identified application on February 19, 2008;

2. As I declared in my Declaration of February 04, 2008, I am also the Ernst HEINZ named as a joint inventor, along with the following individuals in U.S. Application Serial No. 10/019,048:

- Thomas GIRKE, a citizen of Germany, who currently resides and has a post office address at 16937 Cloudcroft Drive, Poway, CA 92064, U.S.;
- Jodi SCHEFFLER, a citizen of the United States of America, who currently resides and has a post office address at 51 Country Road 228, Oxford MS 38655, U.S.; and
- Oswaldo Da COSTA e SILVA, a citizen of Brazil, who currently resides and has a post office address at 203 Littleford Lane, Apex, NC 27502, U.S.;

3. As I declared in my Declaration of February 04, 2008, I believe that Thomas GIRKE, Jodi SCHEFFLER, Oswaldo Da COSTA e SILVA and I are the sole co-inventors of the invention described and claimed in U.S. Patent Application Serial No. 10/019,048;

4. As I declared in my Declaration of February 04, 2008, on July 20, 2000, Thomas GIRKE, Jodi SCHEFFLER, Oswaldo Da COSTA e SILVA and I assigned the entire right, title and interest in the above-identified application and invention to: BASF Plant Science GmbH, having a place of business at 67056 Ludwigshafen, Germany, which assignment was recorded in the U.S. Patent and Trademark Office on December 27, 2001 at Reel/Frame: 012552/0033.

5. Herewith, I further declare that I am the Ernst Heinz who is named as a co-author of the publication "*Identification of a novel  $\Delta 6$ -acyl group desaturase by targeted gene disruption in Physcomitrella patens*", published on July 27, 1998, in The Plant Journal 15(1), 39-48 (1998), and that the Thomas Girke who is also named as a co-author of that publication is the Thomas GIRKE who is named as a co-inventor in U.S. Patent Application Serial No. 10/019,048;

6. I also further declare that the Reference 1 which is mentioned in the "*SCORE Search Result Details ...*" enclosed with the Office action which issued in U.S. Patent Application Serial No. 10/019,048 on February 03, 2010, is an Abstract of the abovementioned publication "*Identification of a novel  $\Delta 6$ -acyl group desaturase by targeted gene disruption in Physcomitrella patens*", published on July 27, 1998, in The Plant Journal 15(1), 39-48 (1998);

7. Moreover, I further declare that the Thomas Girke who submitted the Doctoral Thesis entitled "*Functional characterization of a novel desaturase from Physcomitrella patens (Hedw.) B.S.G.*" in May 1998, is the Thomas GIRKE who is named as a co-inventor in U.S. Patent Application Serial No. 10/019,048; as I previously

declared, the Doctoral Thesis of my co-inventor Thomas GIRKE was publicly available not before September 03, 1998;

8. Further, I herewith declare that the "Girke, T." who is indicated as the author of the Direct Submission designated as Reference 2 in the "*SCORE Search Result Details ...*" enclosed with the Office action which issued in U.S. Patent Application Serial No. 10/019,048 on February 03, 2010, is the Thomas GIRKE who is named as a co-inventor in U.S. Patent Application Serial No. 10/019,048; the Direct Submission was made by Thomas GIRKE to the "Institut für Allgemeine Botanik, Universität Hamburg", Ohnhorststrasse 18, D-22609 Hamburg, Germany, and the Direct Submission was not publicly available prior to the publication of the abovementioned Doctoral Theses of Thomas GIRKE;

9. I further state that each disclosure of the embodiments which relate to the subject matter disclosed and claimed in U.S. Application Serial No. 10/019,048 which was made in

- the publication "*Identification of a novel  $\Delta 6$ -acyl group desaturase by targeted gene disruption in *Physcomitrella patens**", which was published on July 27, 1998, in *The Plant Journal* 15(1), 39-48 (1998);
  - the Doctoral Thesis entitled "*Functional characterization of a novel desaturase from *Physcomitrella patens* (Hedw.) B.S.G.*" which was publicly available not before September 03, 1998; and
  - the Direct Submission designated as Reference 2 in the "*SCORE Search Result Details ...*" which was publicly available not before September 03, 1998;
- was made by me and/or by my co-inventor Thomas GIRKE, and that each such disclosure was made on our own behalf and on behalf of our co-inventors.

10. I hereby declare that all statements made of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the

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Confirmation No.: 1037  
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like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

14.4.2010

Date

E. Heinz

Prof. Dr. Ernst HEINZ